

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF THE REQUEST OF)
THOMAS E. MYERS REGARDING)
SURFACE WATER APPLICATION)
NO. 21648,)

Appellant,)

vs.)

STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)

Respondent.)

PCHB NO. 23

FINDINGS OF FACT,
CONCLUSIONS, AND ORDER

This matter came on for hearing at 10 a.m., March 16, 1971, in the Assembly Room of the Spokane County Courthouse, before the Pollution Control Hearings Board (Walt Woodward, hearing officer), with the appellant, Thomas E. Myers, appearing and being represented by his attorney, Martin G. Weber; with the respondent, Department of Ecology, appearing through Henry W. Ipsen, assistant attorney general; and the intervenor, Spokane County Department of Parks and Recreation, appearing through Richard F. Wrenn, chief deputy prosecuting attorney for Spokane County.

This matter is an appeal of a surface water application granted intervenor by respondent. It involves the taking of water from Fish Lake in Spokane County, along whose shores appellant has a resort, and intervenor is developing a county park.

In addition to depositions previously on file in this matter, witnesses on behalf of appellant were sworn and testified, and exhibits were admitted. Counsel made brief closing statements.

On the basis of depositions, testimony, exhibits and closing statements, the Pollution Control Hearings Board makes the following

FINDINGS OF FACT

I.

That regulations of the Board of Health and Department of Health (now Department of Social and Health Services), WAC 248-54-001 and WAC 248-54-180, which form the basis of appellant's contention that the withdrawal of water by the respondent is illegal, are no longer in effect.

II.

Fish Lake has a surface area of about 47 acres, with a depth of approximately 30 feet at its deepest part. The water in the lake is used by the appellant for domestic supply, irrigation, and recreational purposes in connection with a resort which he operates on the lake. (The resort has been in operation since 1907 and is known as the "Myers Park Resort.")

III.

The amount of water which the applicant, Spokane County Department of Parks and Recreation, will be permitted to withdraw from the public waters of Fish Lake is 0.02 cubic feet per second

(9 gallons per minute), limited to a maximum of 2 acre-feet per year. It is to be used by the applicant for the operation of a public bath house and park, the irrigation of the park lawns during the summer, and a related sewage lagoon facility throughout the year.

IV.

The effect of the withdrawal of the amount of water indicated would lower the level of the water in the lake not more than 1/8 inch in a year's time, assuming no ground water recharge; and it would have no adverse effect upon the operation of the appellant's operation of his resort or his fishing, boating and swimming rights on the lake.

V.

The sewage lagoon, which the appellant fears will result in polluting the waters of the lake, has been approved by the State Board and Department of Health (now the Department of Social and Health Services), the Spokane County Health Department, and the former Washington State Water Pollution Control Commission. It does not violate any official or published criteria for the construction of such lagoons. There is no showing that the use of the sewage lagoon will pollute the waters of the lake.

From the foregoing Facts, the Pollution Control Hearings Board draws the following

CONCLUSIONS

I.

The first contention of the appellants, i.e., illegality based upon former regulations of the Board and Department of Health (now the Department of Social and Health Services), is moot, those regulations being no longer effective.

II.

That there are public waters available for appropriation from Fish Lake in sufficient quantities to satisfy the needs of the applicant's proposed project.

III.

That the lowering of the lake in consequence of the withdrawal of the water under the permit appealed from will not interfere with any of the riparian or other rights of the appellant, nor is it detrimental to the public interest and welfare.

IV.

That the Department of Ecology fulfilled its statutory obligations in granting the challenged permit to the Spokane County Department of Parks and Recreation upon the showing made.

Upon these Findings of Fact and Conclusions, the Pollution Control Hearings Board, affirms the granting of the application appealed from.

DONE at Olympia, Washington this 16th day of April, 1971.

POLLUTION CONTROL HEARINGS BOARD

By Matthew W. Hill
Matthew W. Hill, Chairman

Walt Woodward
Walt Woodward, Member

James T. Sheehy
James T. Sheehy, Member